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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/655,846	09/05/2003	Charles R. Barmore	D-42694-02	7084
28236	7590	03/21/2006	EXAMINER	
			TRAN, THAO T	
		ART UNIT		PAPER NUMBER
		1711		

DATE MAILED: 03/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	10/655,846	BARMORE ET AL.	
	Examiner	Art Unit	
	Thao T. Tran	1711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 20 January 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 40-58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 40-58 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 01/20/2006 has been entered.
2. Claims 40-58 are currently pending in this application. Claims 40 and 53 have been amended in this Reply.
3. In view of the Office action of 10/20/2005, the rejection of claims 40-58, under 35 U.S.C. 103(a) as being unpatentable over Gribbin et al. (US Pat. 4,942,088) in view of Lundquist et al. (US Pat. 2,410,089), has been withdrawn due to the Amendments made thereto.
4. A new rejection is issued as follows.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claim 53 is rejected under 35 U.S.C. 102(b) as being anticipated by Maierson (US Pat. 3,779,848).

Maierson discloses a container having a tearing means of a flexible plastic tape having strips fixed to a fibrous substrate. On the other side of the substrate is a layer of a formulation containing a binder B and a plurality of capsules C containing a fragrance core material (see abstract; Fig. 3; col. 2, ln. 5-6, 20-25). The substrate can be of any fibrous web, such as coating grade paper (cellulose) (see col. 2, ln. 37-40). The tearing means is flexible and made of polyamide or polyethylene strips (see paragraph bridging col. 2-3) fixed to the substrate, which appears to read on the presently claimed 2nd layer.

The capsules C have an aroma internal core and a polymeric cell wall, that comprises a mixture of different components such as gelatin gum arabic, cellulosic polymers, hardened with glutaraldehyde (see paragraph crossing col. 3-4). The binder B can be starch and starch derivatives (hydroxyethyl ether starch), or water dispersible elastomers (see col. 5, ln. 14-23). The layer of the formula containing binder B and capsules C appears to read on the presently claimed 1st layer.

The capsules are also in the glue formulation in layer 6 to adhere the tape to a flap 3 (see col. 3, ln. 18-35). The glue can be of dextrin, gelatin, casein (see col. 2, ln. 59-63). The glue layer appears to read on the presently claimed 3rd layer.

Although Maierson is silent with respect to at least a portion of the binder and the additive in the third layer being transferred to the food product, since the reference teaches the same laminate having the same chemical components, the laminate of Maierson would inherently have the same properties as presently claimed.

Response to Arguments

7. Applicant's arguments with respect to the rejection in the Office action of 10/20/2005 have been considered but are moot in view of the new ground(s) of rejection.

Contact Information

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thao T. Tran whose telephone number is 571-272-1080. The examiner can normally be reached on Monday-Friday, from 9:00 a.m. - 5:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Thao Tran

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March 17, 2006

THAO T. TRAN
PATENT EXAMINER